

IN THE COURT OF APPEALS OF IOWA

No. 3-1227 / 13-1725
Filed January 9, 2014

**IN THE INTEREST OF J.N.,
Minor Child,**

**M.S.-N., Mother,
Appellant.**

Appeal from the Iowa District Court for Black Hawk County, Daniel L. Block, Associate Juvenile Judge.

A mother appeals from the order terminating her parental rights.
AFFIRMED.

Andrew Abbott of Abbott Law Office, P.C., Waterloo, for appellant mother.

Paul Shinkle, Cedar Falls, for father.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Steven Halbach, Assistant County Attorney, for appellee State.

Linnea Nicol of the Juvenile Public Defender's Office, Waterloo, for minor child.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

DANILSON, C.J.

A mother appeals the termination of her parental rights to her child, J.N.¹ The mother suffers from mental illness and failed to follow through with mental health counseling, and she is presently incarcerated. She has violated a no-contact order eight times. The facts support termination. She also argues J.N., who is in the father's custody, had not been removed from both parents' custody for at least six of the last twelve months prior to the termination hearing and thus her parental rights could not be terminated, pursuant to Iowa Code section 232.116(h) (2013). However, this argument is contrary to the principles recited in *In re N.M.*, 491 N.W.2d 153, 155 (Iowa 1992). We affirm.

I. Background Facts and Proceedings.

J.N. was born in August 2012, but the Iowa Department of Human Services' (DHS) involvement with the family began in 2007.

The family first came to the attention of the Iowa Department of Human Services August, 2007, after concerns were received in regard to hazardous and unsanitary conditions in the home. Since 2007, there have been fourteen founded Child Protective Assessments, in which at least one of [the mother's] children being named as victims. These multiple assessments on the children and family include concerns ranging from domestic violence, sexual abuse and unsanitary condition of the home. Numerous services have been offered to [the mother] in attempt to address these concerns for over six years.

J.N. was removed from his mother's custody on November 5, 2012, after she became extremely violent and agitated at a family team meeting with DHS. Law enforcement was called to the meeting to deal with the mother, who has a history of violent behaviors.

¹ The parental rights of the father have not been terminated. The child has been placed with the father.

J.N. was adjudicated a child in need of assistance on February 21, 2013, pursuant to Iowa Code section 232.2(6)(b), (c)(2), and (n). The juvenile court stated:

[The mother] while initially cooperative with the Department of Human Services, however, has at times become antagonistic towards professionals, unwilling to give accurate information. [The mother] has previously not followed through with her individual mental health counseling despite being diagnosed with Bipolar Disorder, ADHD and Personality Disorder. . . . The child is less than one year of age. The child is unable to care for himself. It is contrary to the welfare of the children to return custody to a parent at this time because of the concerns regarding domestic violence, denial of critical care and inadequate supervision.

On March 28, 2013, the mother was sentenced to six years in prison for domestic abuse, third or subsequent offense and assault causing bodily injury. At the time of the termination hearing, the mother's expected discharge date was December 23, 2015.

In October 2013, the juvenile court terminated the mother's parental rights pursuant to Iowa Code section 232.116(1)(d), (e), (h), and (k). The mother appeals.

II. Standard of Review.

Our review of termination decisions is de novo. *In re P.L.*, 778 N.W.2d 33, 40 (Iowa 2010). We give weight to the juvenile court's findings, especially assessing witness credibility, although we are not bound by them. *In re D.W.*, 791 N.W.2d 703, 706 (Iowa 2010). An order terminating parental rights will be upheld if there is clear and convincing evidence of grounds for termination under section 232.116. *Id.* Evidence is "clear and convincing" when there are no

“serious or substantial doubts as to the correctness [of] conclusions of law drawn from the evidence.” *Id.*

III. Discussion.

Iowa Code chapter 232 termination of parental rights follows a three-step analysis. *P.L.*, 778 N.W.2d at 39. The court must first determine whether a ground for termination under section 232.116(1) has been established. *Id.* If a ground for termination has been established, the court must apply the best-interest framework set out in section 232.116(2) to decide if the grounds for termination should result in termination of parental rights. *Id.* Finally, if the statutory best-interest framework supports termination of parental rights, the court must consider if any of the statutory exceptions set out in section 232.116(3) weigh against the termination of parental rights. *Id.*

A. Grounds for Termination.

When the juvenile court terminates parental rights on more than one statutory ground, we may affirm the order on any ground we find supported by the record. *D.W.*, 791 N.W.2d at 707. Iowa Code section 232.116(1)(h) provides that termination may be ordered when there is clear and convincing evidence the child is three years of age or younger, has been adjudicated a child in need of assistance, has been removed from the physical custody of the parent for at least six of the last twelve months, and cannot be returned to the parent’s custody at the time of the termination hearing.

In this case, the mother claims there was not clear and convincing evidence her parental rights should be terminated under section 232.116(1)(h). She does not dispute that J.N. was three years of age or younger at the time of

the hearing and had been adjudicated a child in need of assistance. She does dispute the statutory requirement the child be “removed from the physical custody of the child’s *parents* for at least six of the last twelve months,” noting that J.N. was in his father’s custody at the time of the hearing. See Iowa Code § 232.116(1)(h)(3) (emphasis added). However, this interpretation of the section is contrary to our supreme court’s interpretation. See *In re N.M.*, 491 N.W.2d 153, 155 (Iowa 1992) (“It is not in the children’s best interests to interpret the language of the subsections to prevent termination of the noncustodial parent’s rights when the children are placed in the separate home of the other parent. We conceive of situations when a child in the custody of one parent would benefit from the termination of the other parent’s rights.”). It is undisputed J.N. could not be returned to the mother’s care at the time of the termination hearing, as she was incarcerated at the time.

There is clear and convincing evidence the grounds for termination, pursuant to section 232.116(1)(h), have been met.

B. Best Interests of the Child.

Even if a statutory ground for termination is met, a decision to terminate must still be in the best interests of a child after a review of section 232.116(2). *P.L.*, 778 N.W.2d at 37. In determining the best interests of the child, we give primary consideration to “the child’s safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional conditions and needs of the child.” See Iowa Code § 232.116(2).

We agree with the juvenile court's finding that termination of the mother's parental rights would best provide for the child's long-term nurturing and growth.

The juvenile court reached this conclusion, reasoning:

The immediate and long-term safety of [the child] can best be ensured by a termination of parental rights of [the mother]. The best placement for furthering the long-term nurturing and growth of the child is through placing sole custody with [the father]. Because of [the mother's] history of domestic violence, unavailability, emotional neglect, unmet mental health issues, denial of critical care and substance abuse concerns. The physical, mental, emotional needs of the child . . . can also best be met by no further contact with [the mother].

We agree with the juvenile court that it is in the child's best interests to terminate the mother's parental rights.

C. Exceptions or Factors against Termination.

Finally, we consider whether any exception or factor in section 232.116(3) weighs against termination of parental rights. *P.L.*, 778 N.W.2d at 39. The factors weighing against termination in section 232.116(3) are permissive, not mandatory. See *In re D.S.*, 816 N.W.2d 458, 474–75 (Iowa Ct. App. 2011). The court has discretion, based on the unique circumstances of each case and the best interests of the child, whether to apply the facts in the section to save the parent-child relationship. *In re C.L.H.*, 500 N.W.2d 449, 454 (Iowa Ct. App. 1993) (overruled on other grounds by *P.L.*, 778 N.W.2d at 39).

The mother argues that termination is not necessary since the father has custody of J.N. Iowa Code § 232.116(3)(a). She argues the father can use his discretionary authority to limit her contact with J.N. if necessary. We do not find this argument persuasive. The mother has violated a no-contact order with the

father on eight separate occasions already. She has also been arrested for and convicted of domestic abuse assault against the father.

We conclude no exception or factor in section 232.116(3) applies to make termination unnecessary.

IV. Conclusion.

There is clear and convincing evidence that grounds for termination exist under section 232.116(1)(h), termination of the mother's parental rights is in the child's best interests pursuant to section 232.116(2), and no consequential factor weighing against termination in section 232.116(3) requires a different conclusion. Accordingly, we affirm termination of the mother's parental rights.

AFFIRMED.